In the absence of any world power adjusting the struggle between states in order to reach certain ends, or what are thought to be ends, it would seem that the United States can protest with good cause if the British Black List appears to have no reference to British aims in the struggle with Germany, or if it seems, in application, to involve action or produce effects not necessary to the satisfaction of those aims, for in either case England is acting arbitrarily. Two aspects of the English policy appear. First, if Viscount Grey is right, his government is seeking merely to cut off a stream of goods flowing from England, through America, to Germany.[18] Secondly, England's object may be the impressment of the United States into her policy of economic strangulation of Germany. In either aspect the Black List has a very apparent reference to England's purposes. Therefore it would seem that all this country can do about the Black List is to protest on some vague ground that its trade should not be killed.

The discussion, therefore, reduces to this: the English Black List will be acquiesced in or not according to whether or not this country regards England's aim as her aim.

ECCLESIASTICAL LAW: HOW FAR ADOPTED IN THE UNITED STATES. — An interesting question of statutory construction is involved in a recent decision that a court which by statute has power "to decree divorces from the bonds of matrimony" [1] has no jurisdiction by consequence to decree a legal separation. The legal separation, or divorce *a mensa et thoro*, was the decree given by the ecclesiastical courts of England. The court concedes that the ecclesiastical law is part of the common law,[2] but holds that it was not adopted in this country as part of the common law.[3] *Hodges* v. *Hodges*, 159 Pac. (N. M.) 1007.

The case does not present the same problem as is presented by the adoption of the principles of English law by our common law or equity courts.[4] In these cases tribunals were set up which were essentially the counterparts of their prototypes in England,[5] and hence if not by explicit provision, at least by implication,[6] they were given the entire jurisdiction of the English common law courts or courts of equity.[7] Because, however, of the difference in thought and in institutions due largely to the absence of an established church in most of the colonies, no ecclesiastical

[18] British Note of October last, paragraph six. "The legislation merely prohibits persons in the United Kingdom from trading with specified individuals, who by reason of their nationality or their associations are found to support the cause of the enemy, and trading with whom will therefore strengthen that cause."

[1] N. M. STAT. 1915, § 2773.

[2] See Crump *v.* Morgan, 3 Ired. Eq. (N. C.) 91, 98; Le Barron *v.* Le Barron, 35 Vt. 365, 367; 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, §§ 116 *ff.*; 1 COOLEY'S BLACKSTONE, COMMENTARIES, 4 ed., * 84; DEAN POUND, INTRODUCTION TO THE STUDY OF LAW, 30–31.

[3] The New Mexico courts are directed by statute to apply "the common law as recognized in the United States of America." N. M. STAT. 1915, § 1354.

[4] For the legal theory as commonly stated, see 1 STORY, COMMENTARIES ON THE CONSTITUTION, 5 ed., § 157. *Cf.* REINSCH, THE ENGLISH COMMON LAW IN THE EARLY COLONIES, BULLETIN OF THE UNIVERSITY OF WISCONSIN, Historical Series II, No. 4.

[5] See Commonwealth *v.* Knowlton, 2 Mass. 530, 534–35.

[6] See Cleveland, etc. R. Co. *v.* Keary, 3 Ohio St. 201, 205.

[7] See 1 STORY, EQUITY JURISPRUDENCE, 13 ed., §§ 56–58.

courts were set up here. Therefore, since law cannot be, without a tribunal to administer it,[8] the ecclesiastical law has never as a whole been in force in this country. Instead, certain portions of the subject matter originally adjudicated by the ecclesiastical courts, such as probate and divorce, have been put within the jurisdiction of our common law and equity courts.[9] Since the jurisdiction thus given is only fragmentary, special rather than general, it is limited strictly by the words of the statute. So where there is no statute permitting it the court may not give divorce for impotency of the husband,[10] or cruelty by the wife.[11] And so where the statute contemplates custody of the children by one of the parents, the court cannot award it to a third person.[12] So in the principal case, a grant of jurisdiction to decree absolute divorce does not confer power to decree a limited divorce.

It should not follow from this that none of the principles of the ecclesiastical law of divorce are to be applied by an American divorce court, nor is it generally so held.[13] The statutes are usually construed to authorize the adoption of such of the general principles of the ecclesiastical courts as are applicable to the jurisdiction conferred, and not inconsistent with American institutions and unsuited to American beliefs. So where a statute allowed divorce for impotency, but provided no method of obtaining proof, it was held that the court might resort to the practice of the ecclesiastical courts compelling a medical examination.[14] So also where the statute makes no provision with regard to connivance, courts have assumed that it was intended to adopt the general principles which governed the ecclesiastical courts as to connivance,[15] and similarly with regard to condonation.[16] And so the meaning of a term in the statute like "extreme cruelty" may be construed in the light of the ecclesiastical law.[17] In a striking case in probate law, another graft from the ecclesiastical tree, it was held that the court was free to choose the ecclesiastical rule regarding the effect of revocation on a prior will, in preference to a different rule laid down by Lord Mansfield.[18] No case could better illustrate the continued vitality of the principles of the ecclesiastical law where they are applicable to the circumscribed jurisdictions set up in this country, and where they are not in conflict with manners or statute.

[8] See Dickinson *v.* Dickinson, 3 Murph. (N. C.) 327, 328. In this case an attempt was made to secure a decree of divorce for an act of adultery committed before a divorce court was set up, under a retrospective statute. The court assumed that the law of divorce did not exist in North Carolina before the statute. See Crump *v.* Morgan, *supra*, 98. See also Le Barron *v.* Le Barron, *supra*, 367; 1 BISHOP, *supra*, §§ 116, 128.

[9] See Collier *v.* Collier, 1 Dev. Eq. (N. C.) 352, 353; Parsons *v.* Parsons, 9 N. H. 309, 318.

[10] Burtis *v.* Burtis, 1 Hopk. (N. Y.) 557, 564.

[11] Perry *v.* Perry, 2 Paige (N. Y.) 501.

[12] Hopkins *v.* Hopkins, 39 Wis. 167, 171.

[13] New York is commonly cited for the doctrine that no part of the ecclesiastical law has been adopted here. Burtis *v.* Burtis, *supra;* Erkenbrach *v.* Erkenbrach, 96 N. Y. 456, 463. But *cf.* Wood *v.* Wood, 2 Paige (N. Y.) 108, 111; Griffin *v.* Griffin, 47 N. Y. 134, 137; Higgins *v.* Sharp, 164 N. Y. 4, 58 N. E. 9. See 1 NELSON, DIVORCE AND ANNULMENT OF MARRIAGE, § 10.

[14] Le Barron *v.* Le Barron, *supra.*

[15] Robbins *v.* Robbins, 140 Mass. 528, 530.

[16] Quincy *v.* Quincy, 10 N. H. 272, 273.

[17] Morris *v.* Morris, 14 Cal. 76, 79.

[18] Williams *v.* Miles, 68 Neb. 463, 471, 94 N. W. 705.